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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL No.126 OF 2007

Pravin Ramchandra Shinde — Appellant

Vs.

Smt. Mandakini P. Shinde — Respondent

Mr. N. D. Rao & S. S. Kudalkar,
Advocates for appellant.

Mr. S. V. Dhakephalkar, advocate
for respondent.

CORAM: J. N. PATEL, AND

A. A. SAYED, JJ.

DATE : AUGUST 6, 2007.

P.C. [Per J. N. PATEL, J.]:

. Heard. The only issue which arises for determination in the appeal is whether respondent wife, and minor daughter are entitled to maintenance and if so, what should be the quantum.

2. The learned counsel for the parties submit that the appeal can be disposed of at the stage of admission, dispensing all the formalities like preparation of paper books, and therefore, we have heard the learned counsel for the parties. It is not in dispute that initially the appellant / husband filed the petition for dissolution of marriage under

S. 13(1)(i-a) of the Hindu Marriage Act 1955. During the pendency of the proceedings parties agreed to get the case resolved by amicable settlement and accordingly consent terms for divorce by mutual consent came to be drawn, which is filed on record at Exhibit F. In the consent terms, it has been clearly recorded that the custody of the daughter Ragini will remain with respondent mother and the petitioner even did not claim any access to the daughter and on the other two issues regarding maintenance of the respondent wife and the daughter, and also the respondent's claim for "Stridhan and her belonging" were left to the decision of the Court. The trial Court acting on consent terms proceeded to frame the issues as under-

(1) Whether the respondent and her minor daughter are entitled to get maintenance allowance from the petitioner?

(2) If yes, to what extent?

(3) Whether the respondent is entitled to get any Streedhan or her belongings from the petitioner?

(4) What order?

The Court then recorded evidence on the issues of maintenance and "Streedhan & her belonging" and arrived at a finding that the respondent wife and her daughter Ragini are entitled to maintenance, quantifying the same at Rs.1,000/- each per month. The claim of the respondent for "Streedhan" and personal belongings is negated by the Court.

3. We are not adverting to all the facts in the matter, as the challange to the decision is restricted to the two issues which we have already spelt out.

4. The learned counsel appearing for the appellant submitted that the finding of the trial Court that the wife is entitled for maint enance, is not correct, and by way of alternate plea it is submitted that even if this Court finds that the trial Court's decision regarding the right of the wife to maintenance is justified, then the quantum of maintenance awarded to the wife at Rs. 1,000/- per month is exorbitant. It is further contended by the learned counsel for

the appellant that if at all the Court wanted to saddle the liability by granting maintenance to the respondent/wife it ought not to have granted maintenance from the date of consent terms i.e. from 3rd December 2004, but ought to have made it effective from the date of judgment and order i.e. 13th July 2006.

5. The learned counsel for the respondent submitted that once the parties have filed consent terms and submitted to the jurisdiction of the Family Court to decide the quantum of maintenance, now the appellant/original petitioner cannot agitate the matter before this Court, and that the appeal deserves to be dismissed.

6. It is further submitted that though he has not preferred any cross objection, he may be permitted to point out that the Family Court was not justified in granting permanent alimony in favour of the wife w.e.f. 3rd December 2004 i.e. the date when the parties entered into consent terms and sought the Court's intervention only on the limited issue whether the respondent should be awarded maintenance from the date of petition, which

should be the normal practice, unless the Court gives exceptional reasons to deviate in the matter.

7. In so far as the capability of the appellant/husband is concerned, from the evidence led by the parties, it is quite clear that the appellant has sufficient source of income to pay maintenance to the wife. The contention raised by the learned counsel for the appellant that the appellant has other family members to maintain, does not absolve him of his liability to pay maintenance to the wife. In so far as quantum of maintenance is concerned, we are of the view that sum of Rs.1,000/- is a meagre amount which may be hardly sufficient to meet the bare necessities of life, and therefore, we do not find that on this count, the learned Judge of the Family Court has erred in law and fact, so as to interfere with the decision of the Family Court.

8. The only question now remains for our determination is, whether the Family Court erred in granting maintenance to the respondent wife from the date of consent terms i.e. 3rd December 2004 or it ought to have

been granted from the date of decree.

9. We are informed that during pendency of the petition, no interim order was passed, granting maintenance pendente lite in favour of the respondent/wife. It appears that before the petition in the Family Court came to be filed, the wife had filed an Application under S. 125 Cr.P.C., claiming maintenance and in that case also she was not awarded maintenance at all.

10. In view of the fact that the respondent/wife had no independent income, sufficient for her maintenance, in ordinary course, she could have been entitled for maintenance pendente lite and expenses for litigation, but the same were not claimed. Therefore, while awarding permanent alimony, we find that the Family Court was justified in awarding the same from the date of the consent terms. As it is on that date, the proceedings before the Family Court had almost concluded, except the issues referred to the Court i.e. maintenance as well as Streedhan and personal belongings, and therefore, we do not find that the impugned judgment and order calls for any interference. We therefore, dismiss the

appeal with costs.

11. The counsel for the respondent submits that the respondent be permitted to withdraw the litigation expenses awarded by this Court, which are deposited in this Court by the appellant, and accordingly, she is permitted to withdraw the same.

Sd/- Sd/-

[A. A. SAYED, J.] [**J. N. PATEL, J.]**